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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,239	02/24/2000	Paul W. Romig	28542.00059	6208

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

09/513,239

Applicant(s)

ROMIG ET AL.

Examiner

Shian T. Luong

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-10 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-10 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/25/02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12</u> | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7/25/02 has not been approved. The original disclosure does not disclose the specific shape and structure of the IV bag nor the structure and shape of the plastic-wrapped food package. Applicant can only submit drawings that would not introduce new matter into the specification. For example only, the IV bag shown in proposed Figure 6 introduced new matter by the introduction of a flap and suspension hole. For Figure 7, the disclosure of a food package with an open top was not found in the specification.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the IV bag and plastic-wrapped food package must be shown or the features canceled from claims 24-25. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3728

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8-10 and 22-25 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Katsura et al (US 5,223,315) in view of Heider (US 5,405,667) and Admitted Prior Art.

Katsura et al suggest a container equipped with a label. The label in Figure 1-B has a print layer 3 attached to a metallic layer 5. The metallic layer is bonded to the container. Figure 1C shows a print layer 3 attached to a metal layer 5a and the metal layer 5a is attached to a lower polymeric layer 2a. Katsura et al disclose generally all of the elements of the claims, but lacks a metallized polyester layer bonded directly to the bottle without adhesive. Heider teaches a plastic container having a multilayer label heat bonded thereto. In the background section of the specification, Heider stated that it has been found that applying the labels during the molding process reduce costs of manufacture and produces an attractive container. Conventionally, adhesive is on the label and is heated to adhere the label to the container. However, the use of such a label has inherent problem in that when the plastic container cools, the plastic and paper have different rate of shrinkage and the paper wrinkles and stresses occur in the adhesive. To prevent such occurrence, Heider provided a label used in the labeling process that adhere to the bottle without adhesive. Also, Admitted Prior Art on page 1 of the specification discloses the conventional placement of a label on a semi-permeable plastic container. This includes bottles, cellophane-wrapped styrofoam plates and IV fluids bag. Thus, it would have been obvious in view of Heider and Admitted Prior Art to adhere the label with the metallized layer directly to the container without adhesive to prevent wrinkles. It would have also have been obvious to one having ordinary skill in the art at the time the invention was made to make the metal layer out of metallized polyester, since it has been held to be within the general skill of a worker in the art to

Art Unit: 3728

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Applicant argues that there is no suggestion or motivation in any of the cited art to combine the cited art. Specifically, applicant argue that Heider does not have a metallic layer so there is no suggestion to heat bond a metallic layer. Although Heider does not teach the bonding of a metallic layer to a bottle by heat seal, Heider requires a heat bondable material as discussed on column 2, lines 39-40. Hence, metallic material in the label of Katura would bond directly to the bottle by using the method as taught by Heider. Applicant also argues that there is no reasonable expectation of success with the heat bonding. Applicant appears to underestimate the skill of one of ordinary skill in the art that has the knowledge of substituting different bonding methods such as heat bonding for the adhesive material. In combination with Heider's disclosure and through routine experiments, an artisan can easily determine the amount of metallic material required in order to bond the metallic material to a bottle. Hence, applicant's argument is not found persuasive.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 3728

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Valerie Douglas at (703)308-1337.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.


Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-TH 7:00 am until 4:00 pm (EST).

Application/Control Number: 09/513,239

Page 6

Art Unit: 3728

STL
September 10, 2002



Primary Examiner
Shian Luong
Art Unit 3728